IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6754 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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ISHANPUR GYMKHANA PVT. LTD.

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 6754 of 2003

MR RS SANJANWALA for Petitioner No. 1-2

MS MITA PANCHAL, LD. AGP for Respondent No. 1-5

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CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 16/06/2003

C.A.V. JUDGEMENT

1. Rule. Ms.Mita Panchal, learned AGP waives service of rule on behalf of respondents.

2. Ishanpur Gymkhana Private Limited - petitioner No.1 through his member Arvindbhai J.Dalal has filed this petition under Articles 226 and 227 of the Constitution of India with a prayer that this Court may issue a writ of mandamus or any other appropriate writ, direction or order declaring that the provisions of the Bombay Prevention of Gambling Act do not apply to the legitimate and legal activity of the petitioners, its members and guests of playing the cards' game "rami" at the club premises and further prayed that the respondents be restrained from in any manner interfering with the activity of the petitioners, its members and guests of playing game of "rami" at the club premises situated at the address mentioned in the cause title of the petition.

3. The facts giving rise to this petition are as under:-

3.1 The petitioner No.1 is a Private Limited Company incorporated and registered under the provisions of the Indian Companies Act, 1956. The petitioners have established a sports and recreation club at Rameshwar Shopping Centre, Near Ishanpur Bus Stand, Ishanpur, Ahmedabad where all legitimate sporting activities are being undertaken by the members of the petitioner company. The petitioners are operating on "No Profit No Loss" basis. The petitioners are not undertaking any illegal or illegitimate activity, much less in the form of gambling prohibited under the Act. The Club was established in the year 1986 and is undertaking all kinds of sporting activities at its premises. The petitioners have been permitting its members to use the club premises for playing cards.

3.2 It has been stated in the petition that the petitioners are receiving calls from officers of the police department about the activities at the premises of the petitioner No.1 and threatening to file criminal complaints under the Prevention of Gambling Act. That the members and guests of the club cannot freely use the club premises for their legitimate sporting activities including playing game of cards "rami". As a result, the petitioners are not in a position to undertake all its legitimate and legal activities and have been virtually compelled to close down the club. In view of the threat of raid by the police authorities, the members of the club avoid visiting the club and or using the club premises. This has the effect of throttling the legitimate and legal activities of the petitioner. In view of the aforesaid circumstances, the petition has been filed with the said prayer in this behalf.

3.3 Along with the petition, the petitioner has annexed the order of this Court (Coram: M.S.Shah, J.) in Special Civil Application No.8053 of 1997 dated 27.2.98 in identical situation. Another order dated 12.10.99 passed by this Court (Coram: M.S.Shah, J.) in Special Civil Application No.7161 of 1999 and also the another order of this Court (Coram: K.M.Mehta, J.) in Special Civil Application No.3141 of 2001 dated 7.8.2001. After perusing the same this Court issued notice and made returnable on 22.5.2003.

4. Ms.Mita Panchal, learned AGP appeared on behalf of the Government and she has filed affidavit of Shri C.J.Singh, Police Inspector, Vatva Police Station, Ahmedabad in this behalf. In this affidavit, it has been stated that there are seven offences were registered against the present petitioner club under the Gambling Act and the details thereof has been stated at para 4 on page 3 of the affidavit which reads as under.

| Sr. No. | C.R.No. Reg. | Date of is seized | Amount which (Rupees) | Stage of the case. |
|---|---|---|---|---|
| 1. | II 128/94 | 2.4.94 | 46931/- | Acquitted under sec.225(1) of CRP on 29.7.94. |
| 2. | II 42/95 | 30.1.95 | 95,148/- | Pending before the court. |
| 3. | II 321/95 | 17.9.95 | 23,215/- | Pending before the court. |
| 4. | II 362/96 | 28.12.96 | 84,943/- | Pending before the court. |
| 5. | II 3029/97 | 5.2.97 | 19,107/- | Pending before the court. |
| 6. | II 3057/97 | 25.2.97 | 30,888/- | Pending before the court. |
| 7. | II 3151/97 | 21.5.97 | 13,269/- | Pending before the court. |

4.1 It was, therefore, submitted that the relief which is prayed for by the petitioner cannot be granted

as the cases or the judgments which are attached with the present petition and the facts of the present case is different and the present petitioner club has not pointed out all these details and hence prayer which is asked for by way of present petition cannot be granted in the interest of justice.

5. I see considerable force in the submissions of the learned counsel for the respondents in this behalf.

6. Mr.Sanjanwala, learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of Andhra Pradesh Vs. K.Satyanarayana and others reported in AIR 1968 SC 825. The basis of the said judgment it was held that the game of "rami" is not a game entirely of chance and it is mainly a game of skill, and that therefore the said game, cannot be said to be an offence under the Prevention of Gambling Act, 1987. It is indeed true that the same is the say of the Supreme Court in the said decision. Therefore, the contention coming from learned counsel for the petitioner saying that the game of "rami" is not a game entirely of chance and is mainly a game of skill shall have to be accepted by me.

6.1 Mr.Sanjanwala, learned counsel for the petitioner has also invited my attention to the decision dated 20.11.1997 rendered by this Court (Coram: S.D.Dave, J.) in Special Civil Application No.5475 of 1997 taking a view that the game of "rami" does not amount to gambling and, therefore, the police authorities cannot interfere with the same game being played while enforcing the provisions of the Bombay Prevention of Gambling Act, 1987.

7. Therefore, regard being had to the contentions coming from learned counsel Mr.Sanjanwala and the say of the Supreme Court in case of The State of Andhra Pradesh (supra) and the decisions of this Court, it appear that the present petition requires a recognition and the rule requires to be made absolute. I order accordingly and direct that the respondents shall not interfere with the game of "rami" being played by the members of petitioner club in the club premises. These orders shall never preclude the concerned respondents or the officers working under them from taking appropriate action under appropriate provisions of the relevant law and the rules, if it is found that the member or the members of the club are playing any other game which could be said to be objectionable or prohibited under the law or the rules.

8. In view of my aforesaid observations, I do not deal with the other contention of the learned counsel of the respondent regarding the seven cases which has been filed against the petitioner club in this behalf as the appropriate court can adjudicate the said cases in accordance with law without being influenced by the judgment of this Court. If under the said FIR offences are liable to be registered the same can be registered and adjudicate in this behalf. This Court order refers to only regarding the game of "rami" and it does not apply to any other game which is objectionable or prohibited under the law or the rules.

9. In view of the aforesaid observations and directions, Rule is made absolute to the above said extent. No order as to costs.

(K.M. Mehta, J.)

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